

**Sheriff Manor Nursing Home, Inc. and Local 285,  
Service Employees International Union, AFL-  
CIO, CLC. Case 1-CA-30347**

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on March 30, 1993, and an amended charge on June 15, 1993, the General Counsel of the National Labor Relations Board issued a complaint against Sheriff Manor Nursing Home, Inc. (the Respondent) alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.<sup>1</sup>

On August 31, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On September 3, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Acting Regional Attorney, by letter dated August 6, 1993, notified the Respondent that unless an answer was received by close of business on August 13, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

<sup>1</sup> The affidavits of service of the charge, amended charge, complaint and letter to the Respondent from the Regional Office are attached to the motion. All were served by certified mail, but the only receipt returned to the Regional Office was for the original charge. Counsel for the General Counsel concludes that the Respondent has not claimed its mail. Refusal to claim mail or to otherwise provide for receipt of properly addressed mail cannot serve to defeat the purposes of the Act. See, e.g., *Mondie Forge Co.*, 309 NLRB No. 82 fn. 1 (1992); *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a corporation with an office and place of business in Dorchester, Massachusetts (the Respondent's Dorchester facility), has been engaged in the operation of a nursing home providing inpatient medical care. During the calendar year ending December 31, 1992, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000. During the calendar year ending December 31, 1992, the Respondent purchased and received at its Dorchester facility goods valued in excess of \$5000 directly from points outside the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees working 16 hours or more per week, including nurse's aides, orderlies, general handyman, porters, cooks, relief cooks, housekeepers, laundry employees, kitchen help, and all non-professional employees, including licensed practical nurses, but excluding office and clerical employees, dietary supervisor, registered nurses, casual employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and at all material times the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 1, 1990, to April 30, 1993, as modified by an agreement dated September 23, 1991 (collectively called the 1993 agreement). At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about September 30, 1992, the Respondent has failed and refused to pay contributions to an employee 401(k) plan which have become due under the 1993 agreement. Since about September 30, 1992, the Respondent has failed to pay employees the contractual wage rates as specified in the 1993 agreement. These subjects relate to wages, hours, and other terms

and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

#### CONCLUSION OF LAW

By engaging in the above conduct, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments to an employee 401(k) plan, and by failing to pay contractually required wage rates, we shall order the Respondent to make whole its unit employees for any loss of earnings they suffered as a result of its failure to pay them the contractual wage rates, and by making all 401(k) plan payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses, if any, ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts, as well as backpay for any loss of wages, to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, Sheriff Manor Nursing Home, Inc., Dorchester, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing since September 30, 1992, to pay contributions to an employee 401(k) plan which have become due under the 1993 agreement or failing to pay employees the contractual wage rates as specified in the 1993 agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make unit employees whole for any loss of wages or benefits or other expenses suffered as a result of the Respondent's failure to make the contractually required contributions to the employee 401(k) plan or to pay contractual wage rates in the manner set forth in the remedy section of this decision. The unit consists of the following employees:

All full-time and regular part-time employees working 16 hours or more per week, including nurse's aides, orderlies, general handyman, porters, cooks, relief cooks, housekeepers, laundry employees, kitchen help, and all non-professional employees, including licensed practical nurses, but excluding office and clerical employees, dietary supervisor, registered nurses, casual employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Dorchester, Massachusetts, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

#### CONCLUSION OF LAW

By engaging in the above conduct, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments to an employee 401(k) plan, and by failing to pay contractually required wage rates, we shall order the Respondent to make whole its unit employees for any loss of earnings they suffered as a result of its failure to pay them the contractual wage rates, and by making all 401(k) plan payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses, if any, ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts, as well as backpay for any loss of wages, to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

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1. Cease and desist from

(a) Failing and refusing since September 30, 1992, to pay contributions to an employee 401(k) plan which have become due under the 1993 agreement or failing to pay employees the contractual wage rates as specified in the 1993 agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make unit employees whole for any loss of wages or benefits or other expenses suffered as a result of the Respondent's failure to make the contractually required contributions to the employee 401(k) plan or to pay contractual wage rates in the manner set forth in the remedy section of this decision. The unit consists of the following employees:

All full-time and regular part-time employees working 16 hours or more per week, including nurse's aides, orderlies, general handyman, porters, cooks, relief cooks, housekeepers, laundry employees, kitchen help, and all non-professional employees, including licensed practical nurses, but excluding office and clerical employees, dietary supervisor, registered nurses, casual employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Dorchester, Massachusetts, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 28, 1993

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James M. Stephens, Chairman

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Dennis M. Devaney, Member

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John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

##### NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to pay contributions to the employee 401(k) plan which have become due under the 1993 agreement.

WE WILL NOT fail or refuse to pay employees the contractual wage rates as specified in the 1993 agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole for any loss of wages or benefits or other expenses suffered as a result of our failure to make contractually required payments to the 401(k) plan or to pay contractual wage rates, with interest. The unit consists of the following employees:

All full-time and regular part-time employees working 16 hours or more per week, including nurse's aides, orderlies, general handyman, porters, cooks, relief cooks, housekeepers, laundry employees, kitchen help, and all non-professional employees, including licensed practical nurses, but excluding office and clerical employees, dietary supervisor, registered nurses, casual employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

SHERIFF MANOR NURSING HOME, INC.